

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>D'MEIR SWINGON, a minor by and through Parent and Natural Guardian KIM LONG,</b>  <b>Plaintiff,</b>  <b>v.</b>  <b>RONALD SIMONSON, CHESTER HIGH SCHOOL and CHESTER UPLAND SCHOOL DISTRICT,</b>  <b>Defendants.</b>	<b>CIVIL ACTION</b>  <b>NO. 16-cv-475</b>
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**ORDER**

And NOW, this 3rd day of May, 2016, and for the reasons stated in the foregoing Memorandum, upon consideration of Defendant Ronald Simonson's Motion to Dismiss Plaintiff's Second Amended Complaint (ECF 12), as well as Defendants' Chester Upland School District and Chester High School (Incorrectly Named as a Defendant) Motion to Dismiss Plaintiff's Second Amended Complaint (ECF 13), and all responses and replies thereto, it is hereby **ORDERED** that:

1. Counts I and II, alleging negligence against all Defendants, are **DISMISSED WITH PREJUDICE**;
2. Count IV, alleging state created danger against all Defendants, is **DISMISSED WITH PREJUDICE**;
3. The Motion to Dismiss is **DENIED** as to Plaintiff's claim for excessive use of force (Count III) against Defendant Simonson and **GRANTED** to the extent it asserts any claim for excessive use of force against the remaining Defendants outside of Monell liability;
4. Plaintiff's claims for Monell liability (Count V) are **DISMISSED WITH PREJUDICE** as to Simonson and **DISMISSED WITHOUT PREJUDICE** as to all other Defendants. Plaintiff shall, if he so desires, file a Third Amended Complaint within fourteen (14) days of the docketing of this Order. If Plaintiff fails to file a new complaint, dismissal of the Monell claims shall be with prejudice.

**BY THE COURT:**

/s/ Michael M. Baylson

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**MICHAEL M. BAYLSON, U.S.D.J.**